

RESTATED AND AMENDED AGREEMENT

METROPOLITAN WASTEWATER MANAGEMENT COMMISSION

THIS RESTATED AND AMENDED AGREEMENT was entered into the 5th day of July, 2005 by the City of SPRINGFIELD and the City of EUGENE, municipal corporations of the State of Oregon, and LANE COUNTY, a political subdivision of the State of Oregon, herein referred to as Governing Bodies. The original Agreement dated February 9, 1977, was previously amended January 4, 1978, February 16, 1982, July 19, 1991 and April 3, 1998, which amendments have been incorporated herein.

RECITALS:

1. The Governing Bodies have adopted the plan of land use development known as the Eugene/Springfield Metropolitan Area General Plan and have designated in the plan an Urban Growth Boundary within which urban services may be provided. The Urban Growth Boundary includes the two Cities (urban lands) and certain unincorporated areas surrounding the Cities which lies entirely within the County (urbanizable land).
2. The area within the Urban Growth Boundary, as now or hereafter designated, is a metropolitan area because of its urban character and the close interrelationship between the two Cities and all parts of the area.
3. The urban character of the area makes high quality sewage treatment necessary.
4. Federal funding policy requires sewage treatment and disposal within the Urban Growth Boundary to be provided on a unified, metropolitan basis.
5. In order to plan for sewerage on a unified basis within the Urban Growth Boundary, the Cities and the County entered into an agreement January 8, 1974, establishing the Metropolitan Sewer Advisory Commission.
6. The Cities have the authority under their charters to provide for all aspects of sewerage, are providing it presently for parties within their respective boundaries, and are concerned that it be provided adequately in their environs so as to prevent health hazards.
7. The County, while not presently providing sewerage, has the authority under its charter to do so, has extensive duties under state laws regarding public sanitation, and is concerned about hazards to public health that arise from inadequate sewerage in the area.
8. Under their Charters and the Oregon Revised Statutes, the Cities and County may cooperate in providing sewerage and may enter into contracts to carry on that function jointly or by transferring the function to one of the governmental units.
9. The Cities and the County are determined to provide sewerage on a unified basis within the Urban Growth Boundary.

10. In the parties' opinions, it is not convenient or desirable for any one of them singly to assume or be granted the responsibility for providing sewerage within the Urban Growth Boundary. The parties do believe that a separate commission should be established for that purpose.

11. The parties adopt this Agreement in compliance with ORS 190.010 and 190.085 to create an intergovernmental entity with the powers described in ORS 190.080.

DEFINITIONS:

1. Bonds. Bonds, notes, loans and other borrowings of the Commission that assist the Commission in carrying out the Facilities Plan.

2. CIP. The list of capital improvement projects that is included in the Commission's annual budget and approved annually by the Governing Bodies.

3. Facilities Plan. The Commission's 2004 Facilities Plan as periodically updated pursuant to Section 3.n of this Agreement.

4. Financial Plan. The Commission's 2003 Financial Plan as periodically updated pursuant to Section 3.f of this Agreement.

5. Local Sewerage Facilities. All other publicly owned sewerage facilities within the Urban Growth Boundary.

6. Metro Plan. The Eugene/Springfield Metropolitan Area General Plan as amended from time-to-time.

7. Regional Sewerage Facilities. That part of the sewerage system, as defined in Appendix "A" of this Agreement, as it may subsequently be modified with the concurrence of the Governing Bodies. The Commission has responsibility for the Regional Sewerage Facilities.

8. Sewage: The contents of a sewer.

9. Sewer. A conduit to carry off water and wastewater.

10. Sewerage. All or part of a system used for the collection, transmission, treatment and disposal of sewage.

11. Urban Growth Boundary. The urban growth boundary is the projected geographic area within which a full range of urban services will need to be extended or provided to accommodate urban development as set forth in the Metro Plan.

AGREEMENTS:

1. Commission: The Metropolitan Wastewater Management Commission, herein referred to as Commission, is hereby established as an intergovernmental entity pursuant to ORS 190.010, 190.080 and 190.085 to function under the authority of this

Agreement. The Commission replaced the Metropolitan Sewer Advisory Commission effective February 9, 1977.

2. General Function: The Commission shall construct, operate and maintain the Regional Sewerage Facilities. The Commission shall finance these facilities in accordance with the Commission's Financial Plan. The Commission shall have all the powers allowed to an intergovernmental entity under ORS Chapter 190, as it may be amended from time to time, and any other statute that grants powers to such intergovernmental entities for purposes of carrying out the Specific Functions set forth in Section 3 of this Agreement.

3. Specific Functions: The specific functions of the Commission shall be to:

a. Construct, maintain and operate the Regional Sewerage Facilities.

b. Facilitate the completion of the process of transferring ownership to the Commission of the Existing Sewerage Facilities as defined in Appendix "A" Section VI. The transfer of ownership process shall proceed in a timely manner as determined by the mutual agreement of the Commission and the Cities of Eugene and Springfield. The transfer of ownership process shall include consideration of the following factors:

1. Original source of funds for acquisitions, construction, maintenance, equipment replacement, and major rehabilitation; and

2. Achieving equity among regional sewer users within the Urban Growth Boundary.

c. Salvage abandoned sewerage facilities.

d. Implement the Financial Plan and annual budget for the Regional Sewerage Facilities.

e. Recommend to the Governing bodies a schedule of sewer user charges and system development charges for regional sewer services. The Commission's recommendation shall separately set forth:

1. The rates and amounts that the Commission reasonably determines are necessary to meet Bond covenants, and to achieve and maintain an unenhanced credit rating of A for the Commission's Bonds from at least one nationally recognized rating agency; and

2. Such additional rates and amounts that the Commission determines are appropriate to adequately fund the actions necessary to perform the Commission's functions under this Agreement.

f. Update the Financial Plan, as necessary from time to time, so as to provide guidance for the generation of revenue sufficient for the Commission to fulfill its functions under the Agreement. Any update of the Financial Plan shall be designed to promote the following objectives:

1. Establishing revenue adequacy to provide for long-term health and stability of the Regional Sewerage Facilities through a program of monthly sewer user charges, and system development charges that are imposed uniformly throughout the service area to achieve full cost recovery;

2. Fully funding the needs for equipment replacement and major rehabilitation to address the long-term preservation of the Regional Sewerage Facilities capital assets;

3. Fully funding a program of capital improvements to address capacity, regulatory and efficiency/effectiveness needs;

4. Ensuring equity between newly connected and previously connected users for their total contributions toward the Regional Sewerage Facilities;

5. Ensuring equity between various classes of users based on the volume, strength and flow rate characteristics of their discharges together with any other relevant factors identified by the Commission;

6. Ensuring efficient and cost-effective financial administration of the Regional Sewerage Facilities; and

7. Complying with applicable laws and regulations including those governing the establishment of user charges and the establishment of system development charges pursuant to ORS 223.297 et seq.

g. Establish billing and collection systems, if necessary, in locations where such systems are not provided by others.

h. Contract with the Governing Bodies as appropriate for operation and maintenance of the Regional Sewerage Facilities, administrative services for the Commission and for other services as necessary.

i. Contract for consultant services.

j. Provide service only to the Governing Bodies.

k. Comply with state and federal standards.

l. Adopt minimum uniform standards for pretreatment requirements for industrial and other wastes as necessary.

m. Adopt minimum standards for construction and maintenance of local sewage collection systems.

n. Improve the Regional Sewerage Facilities pursuant to the Commission's Facilities Plan. Changes in the Facilities Plan made by the Commission that result from what are described as the Partial or Comprehensive updates scheduled for 2010, 2015,

2020 and 2025 in the 20-Year Project List, will be submitted to the Governing Bodies for review and approval. The scheduled updates shall be submitted at least 6 months in advance of the anticipated approval date and shall be accompanied by an estimate of the effect the update may have on sewer user charges and system development charges. All other changes to the Facilities Plan may be made by the Commission without referral to the Governing Bodies unless the Commission estimates that they will increase either sewer user charges or system development charges by 5% or more. In that event, the proposed change to the Facilities Plan shall be submitted to the Governing Bodies for review and approval in accordance with the above procedure for scheduled updates except that the proposed change shall be submitted at least 90 days in advance of the anticipated approval date.

o. Take any action necessary or convenient to perform the above functions or other duties as specified elsewhere in this Agreement. No powers or duties related to local annexation or growth policies are granted to the Commission.

p. Issue Bonds as provided in ORS 190.080 or as otherwise allowed under state law, and enter into covenants regarding the operation of the Regional Sewerage Facilities and the imposition of sewer user charges and system development charges that are intended to secure favorable interest rates and other terms for the Bonds.

4. Membership: The Commission shall consist of seven (7) voting members:

a. Each Governing Body shall appoint to the Commission one (1) elected official of that Governing Body.

b. The City Council of Eugene, shall appoint two (2) additional members to the Commission. The City Council of Springfield and the Lane County Commissioners shall each appoint one additional member to the Commission.

c. Members of the Commission shall serve for the term set by the Commission in its bylaws and at the pleasure of the Governing Body appointing that member.

d. A quorum of the Commission shall be five (5) members providing at least one member appointed by each Governing Body is present. Decisions of the Commission shall require a majority vote of the entire membership unless otherwise provided in this Agreement.

5. Bylaws: The Commission shall adopt a set of bylaws governing its conduct. The bylaws shall:

a. Establish times and places of meetings.

b. Establish a central office for the Commission which shall have a mailing address, a telephone and a complete set of records of the Commission, be the main place where information about the Commission can be obtained, and be under the charge of the designated agent of the Commission.

c. Prescribe officers of the Commission, including president and other officers to be elected by the Commission from among its members. The president shall see that meetings of the Commission are conducted in accordance with the bylaws.

6. Meetings: Meetings of the Commission shall be held regularly at times and places designated in the bylaws.

7. Functions of Governing Bodies: The Governing Bodies shall continue to perform the following functions:

a. Billing and collection of sewer user charges and system development charges. User charges will be billed and collected monthly. System development charges will be billed and collected by Eugene and Springfield in accordance with state law.

b. Provide local sewage collection (sewers beyond those specified in Appendix "A".)

c. Provide customer contact.

d. Establish local annexation and growth policies.

8. Obligations of Governing Bodies: The Governing Bodies shall assume the following obligations:

a. Each month remit to the Commission all revenues that are collected by the Governing Body on behalf of the Commission. Efforts to collect delinquent accounts will be consistent with the policies and practices for the collection of delinquent accounts for other utility charges due to the Eugene Water and Electric Board for such revenues collected by Eugene and the Springfield Utility Board for such revenues collected by Springfield. If Lane County collects revenue on behalf of the Commission, Lane County will use delinquent account collection policies and practices that are similar to those used by the Eugene Water and Electric Board and the Springfield Utility Board.

b. Adopt, as a minimum, the Commission's standards for construction and maintenance of sewage collection systems and for pretreatment requirements for industrial and other wastes.

c. Adopt sewer user charges and system development charges and impose those charges on behalf of the Commission at the rates and in the amounts recommended by the Commission pursuant to Section 3.e.1.. Any objection to the rates or amounts of such sewer user charges or system development charges recommended by the Commission pursuant to Section 3.e.1 shall be resolved pursuant to the third paragraph of Section 16 of this Agreement. If the Commission recommends additional rates and amounts pursuant to Section 3.e.2, those additional sewer user charges and system development charges shall only be adopted if they are approved by the Governing Bodies.

d. Provide the Commission with regular periodic reports of revenues and expenses related to Regional Sewerage Facilities.

e. Establish service area boundaries and provide for adjustment thereto as necessary to ensure that service is provided only to areas within the city limits of Eugene and Springfield (City Limits); to users currently being served or to whom contractual service commitments have been made who are outside the City Limits; and to any other areas outside the City Limits to which service may be extended in conformity with the Growth Management provisions in Chapter II of the Metro Plan and the Public Facilities and Services Element provisions in Chapter III of the Metro Plan, as amended.

f. The Governing Bodies will make commitments necessary to assist the Commission in obtaining favorable interest rates and other terms for Bonds approved by the Governing Bodies under ORS 190.080(1).

9. Commission's Liabilities: The Governing Bodies shall be obligated to impose, collect and remit to the Commission sewer user charges and system development charges and to comply with the obligations specifically imposed on the Governing Bodies by this Agreement. Except as provided in the preceding sentence, the Governing Bodies shall not be liable for the debts, liabilities or obligations of the Commission.

10. Grants and Bonds: The Commission shall apply for grants and issue Bonds to achieve the objectives of this Agreement and to carry out an adequate program of sewerage within the Urban Growth Boundary.

11. Contracts: The Commission may enter into contracts for technical assistance and for construction of facilities to achieve the objectives of this Agreement and to provide necessary sewerage in the area.

12. Hearings: The Commission may conduct hearings on complaints from any rate payer who is aggrieved by rules of the Commission, by sewerage rules, regulations, policies, or practices of the Governing Bodies, or by any aspect of the sewerage operations of the Governing Bodies. "Rate payer" means any person or entity responsible for the payment of any charge or fee imposed on behalf of the Commission. The Commission shall provide in its bylaws for advance notice and for conduct of the hearings. After the hearing, the Commission shall submit to the Governing Bodies and to the complainant its findings and recommendations regarding the complaint.

13. Annual Budget and Capital Improvement Program: The Commission shall prepare an annual and any necessary supplemental budgets and CIP in accordance with its bylaws. The Commission may make expenditures or incur obligations only within limits set by the budget and CIP. Except for expenditures that the Commission reasonably determines are necessary to meet Bond covenants and achieve and maintain an unenhanced credit rating of A for the Commission's Bonds from at least one nationally recognized rating agency, the Commission shall not make any expenditures until the Commission's budget and CIP have been ratified by the Governing Bodies. The Commission shall deliver its recommended budget and CIP, together with its estimate of the rates and amounts that are necessary to fund the recommended budget and CIP, to the Governing Bodies by May 1 of each year. If one of the Governing Bodies objects to

the recommended budget, CIP or the rates necessary to fund them, the Governing Body shall make every reasonable attempt to use the reconsideration and mediation process set forth in Section 16 in sufficient time to assure that the Commission has an approved budget by July 1.

14. Recommendations: Upon recommendation of the Commission, the Governing Bodies shall:

- a. Establish sewerage policies.
- b. Provide the personnel and services necessary for the operation and maintenance of the regional sewerage system at the expense of the Commission.
- c. Adopt a system of sewer user charges and system development charges as required by Section 8.c of this Agreement.
- d. Levy and collect the charges.
- e. Apportion funds that the Governing Body receives for sewerage between the Governing Body and the Commission in direct proportion to the total charges that are imposed by the Governing Body for sewerage on behalf of the Commission and the Governing Body.

15. Modification and Termination: This Agreement shall continue until modified by unanimous consent of the Governing Bodies. A Governing Body may terminate its participation in the Agreement by providing one year's advance notice of termination to the other Governing Bodies. If the parties are unable to agree on the division of assets and liabilities between the parties, the dispute shall be referred to a board of arbitration for its decision concerning the division. The board shall have five members: a judge of the Circuit Court of Lane County to be selected by the chief judge of the Court, a representative of the State Department of Environmental Quality to be selected by the director of the Department, and one representative who has not served on the Commission from each Governing Body to be selected by the respective Governing Bodies. Notwithstanding the preceding language in this Section, a Governing Body that is obligated to collect revenue on behalf of the Commission may not terminate its participation in this Agreement unless all Bonds have been paid or defeased.

16. Reconsideration and Mediation: If one or more of the Governing Bodies objects to any action proposed or taken by the Commission, including any action taken to update or implement the Financial Plan or the Facilities Plan, the Governing Body objecting to the action shall request that the Commission reconsider such action by delivering a written request therefor to the Commission. The Commission shall put such action on its agenda for reconsideration at any Commission meeting within 45 days after receipt of the request for reconsideration. Except as provided below, if a Governing Body objects to the Commission's action after reconsideration by the Commission, the Governing Body may refer the matter to the General Membership of the Metropolitan Policy Committee (MPC) for mediation in accordance with any procedure adopted by MPC.

If a resolution of the matter has not been reached previously, MPC shall, within 45 days after referral of the matter to MPC, make a written recommendation for resolution of the matter to the Governing Bodies for their consideration. MPC's recommendation shall be advisory only and shall not be binding on the Governing Bodies. Except as provided below, the Commission's action shall take effect only after all Governing Bodies are in agreement.

If the action objected to is the Commission's determination of rates and amounts pursuant to Section 3.e.1, the recourse of an objecting Governing Body is limited to submitting the matter to the Commission for reconsideration within 30 days after the Commission's recommendation is made. The Commission's decision on reconsideration of those rates and amount shall be final.

IN WITNESS WHEREOF, the undersigned, by authority of their respective Governing Bodies, have executed the within Agreement.

DATE: _____ CITY OF SPRINGFIELD, a Municipal Corporation of the State of Oregon
By: _____
Title: City Manager

DATE: _____ CITY OF EUGENE, a Municipal Corporation of the State of Oregon
By: _____
Title: City Manager

DATE: _____ LANE COUNTY, a Political Subdivision Of the State of Oregon
By: _____
Title: County Administration

APPENDIX "A"

EUGENE-SPRINGFIELD REGIONAL SEWERAGE FACILITIES DEFINITION

I. Background.

This Appendix defines the regional sewerage facilities necessary to provide for the shared wastewater transportation, treatment and disposal needs of the Eugene-Springfield metropolitan area.

Service shall be provided only within the Urban Growth Boundary. Facilities shall be designed and constructed to that end, but may be constructed either inside or outside the Urban Growth Boundary.

The Regional Sewerage Facilities shall be integrated with the Eugene and Springfield local collection and transportation systems. The combination of regional and local sewerage facilities, including associated real property comprises the entire sewerage system for the Eugene-Springfield metropolitan area. The Regional Sewerage Facilities consist of permanent facilities and temporarily shared facilities. Permanent Regional Facilities generally support the transportation, treatment, re-use, and disposal of wastewater and biosolids generated in areas served by Eugene and Springfield. Temporary Regional Facilities are those which do not meet the definition for Permanent Regional Facilities (Section II.A below), and were funded, in part, by Federal construction grant funds. Effective July 1, 2005, the Temporary Regional Facilities will be owned and operated by the municipality which has planning authority for the area in which they are located. The ownership interest in such facilities will remain subject to the security interest of the Federal Government until it expires by its terms on December 31, 2006.

II. Regional Sewerage Facilities.

The Regional Sewerage Facilities include the following:

A. Permanent Regional Facilities.

1. The Eugene-Springfield Regional Water Pollution Control Facilities (WPCF) that are located at: 410 River Avenue, Eugene, Oregon, and the wet weather control facility located immediately southwest of the intersection of Walnut and Aspen Streets, Springfield, Oregon.
2. The Eugene-Springfield Regional Biosolids Management Facilities (BMF) that are located at 29689 Awbrey Lane, Eugene, Oregon.
3. The Seasonal Industrial Waste Facilities (SIWF) that are located at 91199 Prairie Road, Junction City, Oregon.
4. The Biocycle Farm Facilities (BFF) that are located at 29689 Awbrey Lane adjacent to BMF.

5. All sewers, regardless of size or type which, as of the Effective Date, are required to transport wastewater to the WPCF, BMF, BFF or SIWF from the points at which wastewater flows are combined from areas served by Eugene and Springfield together with:

a. The entire "East Bank Interceptor".

b. The Glenwood River Crossing and the portions of the Glenwood collection system that convey combined wastewater flows from Eugene and Springfield service areas.

6. Major pump stations, pressure mains and other facilities associated with the Regional Sewerage Facilities described in Sections II.A 1-5 above, including, but not limited to:

a. The Willakenzie Pump Station – located at 3050 Goodpasture Lakes Loop, Eugene.

b. The Old Springfield plant Pump Station – located at Aspen & Walnut, Springfield.

c. The Glenwood Pump Station – located at 3580 Franklin Blvd., Eugene.

d. The Irvington Pump Station – located at 1248 Irvington Drive, Eugene.

e. The pressure main from the WPCF to the BMF.

f. The pressure main from the BMF to the Irvington Pump Station.

g. The pressure main from its current point of origin approximately 250 feet north of Eighth Avenue on Mill Street in Eugene to the SIWF.

h. The pressure main from the WPCF to the BFF.

7. All other sewerage facilities that are not Temporary Regional Facilities and which, before or after the Effective Date, have been or are acquired or constructed and maintained by the Metropolitan Wastewater Management Commission for the purposes of conveying, treating, reusing or disposing wastewater or wastewater treatment byproducts for sewer users within the Urban Growth Boundary.

B. Temporary Regional Sewerage Facilities.

The pump stations, pressure mains and gravity sewers, together with other facilities directly related thereto consisting of:

1. The Beverly Park -- Don Street relief interceptor, Springfield.

2. The Terry Street Pump Station – located at 5190 Barger Drive, Eugene.

3. The West Irwin Pump Station – located at 2525 West Irwin Way, Eugene.

4. The Filmore Pump Station – located at 1405 E. Briarcliff Lane, Eugene.

III. Conveyance of Ownership of Temporary Regional Facilities.

Promptly after the Effective Date, the Temporary Regional Facilities shall be transferred to the local jurisdiction in which they are located.

IV. Effective Date.

The definition of regional sewerage facilities set forth herein shall be effective on July 1, 2005.

V. No Change Without Redesignation.

Permanent Regional Sewerage Facilities shall remain regional sewerage facilities notwithstanding any change in their function or purpose unless and until MWMC, in coordination with the affected Governing Body, redesignates them, in whole or part, as nonregional sewerage facilities. The need therefor shall be reviewed by MWMC annually in conjunction with the preparation of the MWMC budget.

VI. Original Definition of Existing Sewer Facilities.

A. The existing sewage treatment facilities owned by the Cities of Eugene and Springfield.

B. The existing gravity sewers, pump stations, pressure mains and other appurtenances owned by the Cities of Eugene and Springfield, from the points at which the sewer lines first become 24 inches or larger in diameter to the existing treatment facilities described in Section VI A above.